

FILED

BEFORE THE TORTURE INQUIRY AND RELIEF COMMISSION

In re:

Claim of Jaime Hauad

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TIRC Claim No. 2011.025-H

ORDER CONCERNING JURISDICTION

The claim of Jamie Hauad was initially decided by the Commission and referred to the Circuit Court of Cook County on May 20, 2013. The claim was one of three decisions withdrawn on September 25, 2013, because the crime victims had not been notified. Notification has subsequently been made, and the matter has been reconsidered by the Commission.

Since last September, two Cook County Circuit Judges ruled that the Commission cannot refer a claim of torture, unless it is “related to allegations of torture committed by Commander Jon Burge or any officer under the supervision of Jon Burge,” citing 775 ILCS 40/5(1).^{1/} These rulings have caused the Commission to reconsider its jurisdiction over claims such as this claim.

When the Commission was organized in 2010, it decided that it would accept “non-Burge-related” claims for filing, and would investigate and review such cases. In light of the recent trial court rulings and a review of the statute and legislative history, the Commission has concluded that there is a substantial question concerning its jurisdiction to decide this claim. While the Commission continues to think the issue is arguable, it has determined that it likely does not have jurisdiction over cases that do not involve Jon Burge, or officers who were serving or had served under the supervision of Burge.

The Commission’s staff has been informed by counsel for Hauad that they would seek administrative review of the Commission’s conclusion if the Commission concluded – as it now has – that it lacks jurisdiction over non-Burge-related claims. The Commission encourages prompt review of this jurisdictional issue by the courts, so that the Commission may determine how to proceed with the approximately 125 non-Burge related claims that are currently pending.

Because the Hauad claim was previously investigated by the Commission staff and an initial disposition in this case was issued by the Commission, and in order to facilitate the likely

^{1/} See People v. Darrell Fair, No. 98 CR 25742 (Dec. 2013)(Slattery Boyle, J.), and People v. Kevin Murray, No. 88 CR 02309 (Nov. 6, 2013)(McHale, J.).

administrative review, the Commission is issuing a separate Amended Case Disposition today on the substance of Hauad's claim.^{2/}

This case illustrates a limitation of the statute governing the Commission's business, the Torture Inquiry and Relief Commission Act ("TIRC Act"), P.A. 96-223, 775 ILCS 40/1 *et seq.* Despite the evidence of conduct meriting judicial review and the suggestion of possible innocence, the lack of clear jurisdiction in the TIRC Act appears to prevent the Commission from giving Hauad the access to a new post-conviction hearing that he may deserve.

I. SUMMARY OF CLAIM.

Jaime Hauad claims that he was arrested for questioning in a double murder on the evening of May 26, 1997, and questioned for two days at Area Five of the Chicago Police Department. The murder involved a dispute among factions of the Maniac Latin Disciples.

At Area Five, Hauad claims he was beaten, slapped, threatened, and held down while a large paper cutter was used to cut off the tips of his shoes, with threats to cut off his toes. Hauad refused to sign a statement. Hauad claims that false exculpatory statements that he allegedly made before and after the alleged torture were fabricated by police and an Assistant State's Attorney, and introduced at trial. Hauad was convicted of the murders. The Commission has no information that any of the detectives allegedly involved were ever supervised by Jon Burge.^{3/}

II. JURISDICTIONAL ISSUE.

Under the TIRC Act, the Commission has jurisdiction to investigate claims of torture:

(1) "Claim of torture" means a claim on behalf of a living person convicted of a felony in Illinois asserting that he was tortured into confessing to the crime for which the person was convicted and the tortured confession was used to obtain the conviction and for which there is some credible evidence

^{2/} In the Amended Case Disposition, the Commission concludes that there is evidence of conduct amounting to torture, meriting judicial review of Hauad's claim that the police (a) used a paper cutter to cut the tips of his shoes and (b) threatened to cut off his toes seeking to cause him to confess. It also concludes that there is some evidence that Hauad is factually innocent. In that separate Disposition, the Commission exercises its discretion under 775 ILCS 40/45(d) to refer the matter to the State's Attorney of Cook County for re-evaluation.

^{3/} More detailed factual information about the Claim is contained in the separate Amended Case Disposition, issued today. That detail includes information suggesting that Hauad may be innocent of the crime.

related to allegations of torture committed by Commander Jon Burge or any officer under the supervision of Jon Burge. [775 ILCS 40/5(1).]

Hauad clearly meets several of these requirements. He is a living person, convicted of a felony in Illinois, who asserts he was tortured. As discussed in the separate Disposition, there is some credible evidence that he was tortured. Nevertheless, Hauad's claim raises an issue concerning whether his claim meets the jurisdictional definition of "claim of torture" quoted above:

- Is his claim "related to allegations of torture committed by Commander Jon Burge or any officer under the supervision of Jon Burge" where none of the officers involved in the alleged torture had ever been supervised by Jon Burge?^{4/}

To review this issue, the Commission has reviewed the statutory language, the legislative history and cases from the Illinois Supreme Court discussing principles of statutory construction.

A. Principles of Statutory Construction.

To interpret the TIRC Act, the Commission looks to the rules of statutory construction articulated by the Illinois Supreme Court:

When construing a statute, our primary objective is to ascertain and give effect to the intent of the legislature. *People v. Elliott*, 2014 IL 115308, ¶ 11, 378 Ill.Dec. 424, 4 N.E.3d 23. The most reliable indicator of legislative intent is the statutory

^{4/} There is some question as to the timing of Hauad's allegations of torture. Hauad has contended that a statement he allegedly gave after he was tortured was used to obtain the conviction, but his final statement to an ASA was not introduced at trial. In addition, there are two other questions raised by Hauad's claim:

- Was he "tortured into confessing" since he claims that statements made after the alleged torture were fabricated by the police and/or Assistant State's Attorney, and not actually made by him?
- Was he "tortured into confessing" since the statements that he admits making after the alleged torture were false exculpatory statements, and/or otherwise not a full confession?

In light of the resolution of the non-Burge related question, the Commission is not answering these two questions in this decision. The Commission has proposed a rule that would address the second of those questions, by defining "tortured confession" as "including any incriminating statement, vocalization, or gesture made by a convicted person as a result of torture." Sec. 2000.10, Ill. Reg. 8844 (April 25, 2014), at https://www2.illinois.gov/itrc/Documents/register_volume38_issue17%20-INTROTIRCpages.pdf.

The Commission may separately consider whether to propose an amendment to its rules to define the term "tortured into confessing to the crime for which the person was convicted and the tortured confession was used to obtain the conviction" to include a statement attributed to a claimant by a police officer or Assistant State's Attorney, after torture, even if the claimant denies making the statement.

language, given its plain and ordinary meaning. *Elliott*, 2014 IL 115308, ¶ 11, 378 Ill.Dec. 424, 4 N.E.3d 23. In determining the statute's plain meaning, we consider the subject it addresses and the legislature's purpose in enacting it. *Elliott*, 2014 IL 115308, ¶ 11, 378 Ill.Dec. 424, 4 N.E.3d 23.

BAC Home Loans Servicing, LP v. Mitchell, 2014 IL 116311, ¶38, 6 N.E.3d 162 (Ill. 2014).

“The best indication of legislative intent is the statutory language, given its plain and ordinary meaning. . . . Where the language is clear and unambiguous, we must apply the statute without resort to further aids of statutory construction.” *Krohe v. City of Bloomington*, 2013 IL 94112, ¶3, 789 N.E.2d 1211 (2003).^{5/} Only when a statute is ambiguous will the court “look to aids of statutory construction, including legislative history and established rules of construction.” *BAC Home Loans*, 2014 IL 116311, ¶38.^{6/}

B. The TIRC Act.

The TIRC Act has several provisions that may affect the scope of its jurisdiction.

1. The definition of a “Claim of Torture.”

First, the plain language of the Act’s definition of “claim of torture” requires that the claim relates to Jon Burge:^{7/}

^{5/} *Accord, Poris v. Lake Holiday Prop’ty Owners Ass’n*, 2013 IL 113907, ¶47, 983 N.E.2d 993 (2013); *Schultz v. Performance Lighting, Inc.*, 2013 IL 115738, ¶12, 999 N.E.2d 331 (Ill. 2013)(“The best indicator of legislative intent is the statutory language itself, given its plain and ordinary meaning.”)

^{6/} *Accord, e.g., Home Star Bank and Financial Services v. Emergency Care*, 2014 IL 115526, ¶24, 6 N.E.3d 128 (Ill. 2014)(discussing rules of statutory construction, emphasizing importance of starting with plain language of the text, and only turning to legislative intent and other principles when plain meaning is unclear); *Hartney Fuel Oil Co. v. Hamer*, 2013 IL 115130, ¶¶23-26, 998 N.E.2d 1227 (2013)(same).

^{7/} The TIRC Act also contains a definition of statutory purpose:

Sec. 10. Purpose of Act. This Act establishes an extraordinary procedure to investigate and determine factual claims of torture related to allegations of torture that shall require an individual to voluntarily waive rights and privileges as described in this Act. [775 ILCS 40/10.]

This section does not advance the analysis of the meaning of a “claim of torture,” since it merely authorizes TIRC “to investigate . . . claims of torture . . . as described in this Act.” Since “claim of torture” is a defined term, any argument from the statutory purpose is not helpful.

(1) "Claim of torture" means a claim on behalf of a living person convicted of a felony in Illinois asserting that he was tortured into confessing to the crime for which the person was convicted and the tortured confession was used to obtain the conviction and *for which there is some credible evidence related to allegations of torture committed by Commander Jon Burge or any officer under the supervision of Jon Burge.* [775 ILCS 40/5(1) (emphasis added).]

2. The Right to Screen and the Provision Setting Priority.

Second, the powers of the Commission include a right to screen cases, and a requirement that the Commission give priority to certain claims of torture:

Sec. 35. Duties. The Commission shall have the following duties and powers:

(1) To establish the criteria and screening process to be used to determine which cases shall be accepted for review.

(2) To conduct inquiries into claims of torture with *priority to be given to those cases in which the convicted person is currently incarcerated solely for the crime to which he or she claims torture by Jon Burge or officers under his command, or both.* [Emphasis added.]

3. Discovery Provisions.

The Commission has also been given a broad range of discovery powers, which have statewide applicability, but are to be enforced in the Circuit Court of Cook County.

(d) The Commission may use any measure provided in the Code of Civil Procedure and the Code of Criminal Procedure of 1963 to obtain information necessary to its inquiry. The Commission may also do any of the following: issue subpoenas or other process to compel the attendance of witnesses and the production of evidence, administer oaths, *petition the Circuit Court of Cook County or of the original jurisdiction for enforcement of process or for other relief,* and prescribe its own rules of procedure. *All challenges with regard to the Commission's authority or the Commission's access to evidence shall be heard by the Circuit Court of Cook County,* including any in camera review.

(e) While performing duties for the Commission, the Director or the Director's designee *may serve subpoenas or other process issued by the Commission throughout the State . . .* [775 ILCS 40/40 (emphasis added).]

4. Referral Provisions.

When the Commission reaches the decision to refer a case to court, it can only refer cases to the Circuit Court of Cook County:

If 5 or more of the 8 voting members of the Commission conclude by a preponderance of the evidence that there is sufficient evidence of torture to merit judicial review, *the case shall be referred to the Chief Judge of the Circuit Court of Cook County by filing with the clerk of court the opinion of the Commission with supporting findings of fact . . .* [775 ILCS 40/45(c) (emphasis added).]

* * * * *

(a) If the Commission concludes there is sufficient evidence of torture to merit judicial review, the Chair of the Commission shall request *the Chief Judge of the Circuit Court of Cook County* for assignment to a trial judge for consideration. [775 ILCS 40/50(a) (emphasis added).]

Arguably inconsistently, the statute provides that if a case is dismissed, the dismissal should be filed in the court of original jurisdiction (which is not specified to be Cook County):

If less than 5 of the 8 voting members of the Commission conclude by a preponderance of the evidence that there is sufficient evidence of torture to merit judicial review, the Commission shall conclude there is insufficient evidence of torture to merit judicial review. The Commission shall document that opinion, along with supporting findings of fact, and *file those documents and supporting materials with the court clerk in the circuit of original jurisdiction.* [775 ILCS 40/45(c) (emphasis added).]

The Commission also has a general power to refer its findings to the appropriate authority. This discretion does not appear to be limited to matters that the Commission ultimately determines are credible and within its jurisdiction:

(d) Evidence of criminal acts, professional misconduct, or other wrongdoing disclosed through formal inquiry or Commission proceedings shall be referred to the appropriate authority. [. . .] The Commission shall have the discretion to refer its findings together with the supporting record and evidence, to such other parties or entities as the Commission in its discretion shall deem appropriate. [775 ILCS 40/45(d).]

C. Legislative History.

The essential provisions of the TIRC Act were passed by each House in the 95th General Assembly in 2008-2009, but not signed into law. The current statute was passed by each house in 2009 and signed into law in August, 2009.

In general, the legislative history suggests that the General Assembly may have thought that claims should be limited to those related to Jon Burge and officers who had worked under Burge. The 2009 statements by Rep. Turner, the principal House sponsor of the TIRC Act, however, create uncertainty as to the scope of the Legislature's intent.

1. Senate History.

Sen. Raoul sponsored the TIRC Act in the Senate. His comments on March 25, 2009, suggested that the Act should be limited to claims related to Jon Burge:

Senate Bill 48 is identical to House Bill 5032 that we passed out of the Senate unanimously two months ago It creates the Illinois Torture . . . Inquiry and Relief Commission . . . to investigate any claims brought by victims of Chicago Police Commander Jon Burge or any officer under his supervision. . . . If a majority of the Commission members found that the claim is sufficient, *the Commission would refer to the Chief Judge of the Circuit Court of Cook County the – the claims with supporting findings for appropriate action by the – by the Court.* [PP. 24-25 (emphasis added).]

* * * * *

[T]his is about people who were tortured in police departments utilizing methods such as electrodes to testicles, suffocating with tops of – of typewriter – typewriter covers. And there are people who may currently be incarcerated who may not be – need to be there. And there are people who may have served time who may want to clear their name. And this torture commission would allow them a vehicle to do so. We've heard about the Attorney General's Office and the Cook County State's Attorney's Office playing hot potato with this matter. You know, we're trying to create a vehicle where there would be a commission who will confront this issue once and for all. And – and it'll be good for – for – providing a vehicle, so that all the – the majority of good serving police officers would – would thereby have closure on this. But closure will not be achieved until each and every victim of Commander Burge and – and the police officers under his command, each and every one of their cases are heard. [P.27 (emphasis added).]

96-223, Sen., 3/25/09 Tr., at <http://www.ilga.gov/senate/transcripts/strans96/09600030.pdf>. The Act was then passed by a vote of 52 to 2. (3/25/09 Tr. at 30)^{8/}

2. House History.

Following the passage of the Senate bill in 2009, the bill was passed by the House. In the floor discussion, Rep. Turner was the sponsor, and addressed the scope of the bill. His description of the bill was broader than that of Sen. Raoul. In response to a question from Rep. Black, there was the following exchange:

Black: “Representative, this is not an opened-ended Bill, but I want your assurance, it is specifically targeted towards alleged wrongdoing by a Chicago Police official, correct? It doesn’t allow unfounded or unfounded accusations throughout the State of Illinois to be the subject of this commission’s inquiry, does it?”

Turner: “*It’s primarily focused at the City of Chicago. I don’t think it would . . . preclude another allegation if it was from... one made elsewhere. But most of the torture claims thus far has all come from Cook County and it’s all centered around that particular case.*” [Emphasis added.]

96-223, House, 5/13/09 Tr. 14, at <http://www.ilga.gov/house/transcripts/htrans96/09600053.pdf>. After a discussion of how the State’s Attorney of Cook County was investigating these convictions, Rep. Turner said that more than 20 alleged torture victims were sitting in prison, so it was at least 20 cases.^{9/}

^{8/} An earlier version of the bill, with similar language about the definition of “claim of torture,” was considered by the Senate in January 2009. In responding to a question about why the Burge-related incidents warranted the creation of a commission, when there are many instances of police brutality, Sen. Raoul said:

SENATOR RAOUL:

. . . [T]here was a special prosecutor assigned to – to investigate the allegations with this particular police district, and as a result of the investigation of the special prosecutor, it was allegations of torture, multiple allegations of torture were substantiated under this particular police commander. I do realize that police abuse exists beyond this particular police station and – and beyond the supervision of this particular police commander, but there – there have not been other instances of a special prosecutor having done a specific investigation of a commander like this that I know. And so, that – this distinguishes this particular case from other – other instances.

Sen., 1/13/09 Tr. 29-30 (emphasis added), at <http://www.ilga.gov/senate/transcripts/strans95/09500183.pdf>.

^{9/} The 2009 House discussion continued with a discussion of whether witnesses would receive immunity from the Commission or the State’s Attorney, the composition of the Commission, and Jon Burge’s recent indictment for perjury. There was also an exchange about the type of relief provided, and whether it would

Rep. Turner's comment about 20 alleged victims appears to refer to a discussion in the House the prior year (when the bill also passed the House).^{10/} In the 2008 floor discussion, Rep. Turner's comments suggested a narrower focus for the bill than in his 2009 discussion:

[T]he rationale for this commission is to look into the police allegations or the torture allegations that have been leveled against Chicago police officers under the supervision of Commander Jon Burge. . . . There are twenty-seven (27) men still incarcerated . . . who are alleging or were involved with this case with this police commander as mentioned I do believe that if twenty-seven (27) people are in jail that should not be there, I think it at least warrants some investigation or at least those guys are entitled to have someone look at their particular case and see if in fact there's some truth to their allegations. [Emphasis added.]

House, 5/29/08 Tr. 216-17, at <http://www.ilga.gov/house/transcripts/htrans95/09500275.pdf>. After further discussion about the Commission's membership and the 27 people, Tr. 217-21, Rep. Turner was asked whether there was a sunset for the bill. He responded: "Yeah. This commission is only created for the purpose of looking only at the cases that involve this one police officer in Chicago." [Tr.221 (emphasis added).]^{11/}

be through the Cook County State's Attorney. The bill passed 115 to 0 in 2009. *Id.* at 15-18.

^{10/} The language concerning "claim of torture" was identical in 2008 to the language that was passed into law in 2009. See <http://www.ilga.gov/legislation/95/HB/PDF/09500HB5032ham001.pdf>, at 1-2.

^{11/} The discussion continued with a suggestion that jurisdiction should be broadened:

Reis: "In one of the suggestions that was brought up in committee was to form a task force with a specific duty in mind for reviewing all these cases *not just in the awful, terrible case of Mr. Burge, but have it more broad*, very specific, have a . . . time frame where... they could review these cases and make recommendations. . . ."

Turner: "[Y]our point is well-taken and it's probably something that we should create for the other cases. . . . [T]hese twenty-seven (27) individuals and it's the headlines that have come up over the years regarding this case and the people that have been released because they were tortured that I think that this ... the uniqueness of this commission is just for this purpose and when . . . This thing sunsets when they're through looking at . . . these cases and this case only."

Reis: "[W]e're taking about not just one person but twenty-seven (27) different cases and giving this commission kind of cart [sic] blanche authority to go in and reexamine all these verdicts *We'd like to have it be more focused on the broad issue of torture* and then sunset. . . or make the recommendations and then sunset. [*Id.* at 221-22 (emphasis added).]

Rep. Sacia praised "investigating the most despicable man that ever carried a badge . . [who] brought unbe-

D. Construction of the Statute by TIRC.

In summary, a review of the legislation and its legislative history shows that:

- While the bulk of the TIRC Act refers to the Circuit Court of Cook County, there are references to other courts in the State.
- While the legislative history is focused on Jon Burge, it is somewhat ambiguous, given Rep. Turner's 2009 comments on the House floor and Sen. Raoul's references to the "police officers under [Burge's] . . . command," and not just to Burge himself.
- Nevertheless, the plain language of the TIRC Act suggests that a "claim of torture" must be related to Jon Burge and officers under his supervision.

1. The Commission's Original View.

When the Commission originally considered the scope of its jurisdiction, given the uncertainties in the statute and the receipt of claims not related to Jon Burge, it decided to construe the TIRC Act broadly and accept claims of torture from anywhere in the State, whether or not they were related to Jon Burge. To implement that decision, when the Commission's original Rules were drafted, the Commission decided to delete the last phrase from the TIRC Act's definition of "claim of torture." 20 Ill. Adm. Code 2000.10. The Commission therefore accepted for filing and processing claims, including this claim, that do not involve detectives who were at the time, or previously had been, supervised by Jon Burge.

2. The Commission's Revised Interpretation of the TIRC Act.

Having reviewed the legislative history, reviewed the arguments of counsel for Hauad, and considered the Circuit Court decisions on its jurisdiction, the Commission now believes that it likely does not have jurisdiction over claims of torture that do not involve Jon Burge or officers that he currently or formerly supervised. It reaches this decision because of the plain language of the definition of "claim of torture" in 775 ILCS 40/5(1). The Commission believes this language is "clear and unambiguous, [so] we must apply the statute without resort to further aids of statutory construction." *Krohe*, 2013 IL 94112, ¶3. Given that conclusion, the Commission believes that its existing rules, to the extent they delete the requirement that a "claim of torture" be "related to allegations of torture committed by Commander Jon Burge or any officer under the supervision of Jon Burge," are invalid.

Nevertheless, the Commission believes that the plain language of the Act is not limited to claims of torture that were committed under the direct supervision of Jon Burge, but extends to claims that are "related to allegations of torture committed by Commander Jon Burge or any officer under the supervision of Jon Burge." The Commission believes that the use of the phrase

lievable great discredit on the profession of law enforcement" The bill passed 110-0. [*Id.* at 223-37.]

“related to” includes claims against officers formerly supervised by Burge who allegedly continued to commit the same types of acts, and that including those claims is consistent with the statutory purpose, the plain language, and the uncertainty in the legislative history. To clarify the Commission’s interpretation of the TIRC Act’s definition of “related to,” the Commission has proposed an amendment to Section 2000.10 of the TIRC regulations.^{12/}

The Commission construes the provisions of the TIRC Act to be consistent, as follows:

- The Commission has jurisdiction over claims of torture involving officers who then served or had previously served under Burge, since those claims fall within the “related to” clause.
- The Commission gives priority to those cases in which the convicted person is currently incarcerated solely for the crime to which he or she claims torture by Jon Burge and/or officers who were then under his command. The priority language is narrower than the jurisdictional language: since the priority clause does not contain the “related to” phrase, claims against officers formerly supervised by Burge are not within the priority section.^{13/}
- The Commission construes its statewide discovery powers as permitting enforcement of discovery throughout the State, but not granting jurisdiction for claims that are outside Cook County and unrelated to Burge.^{14/}
- This construction enforces the TIRC Act’s language that the Commission can only refer cases to the Circuit Court of Cook County.
- This construction applies the language that the Chief Judge of the Circuit Court of Cook County assigns a referred matter to a trial judge for consideration. 775 ILCS 40/50(a).^{15/}

^{12/} The proposed amendment was published in the Illinois Register on April 25, 2014, and is available at https://www2.illinois.gov/itrc/Documents/register_volume38_issue17%20-INTROTIRCpages.pdf.

^{13/} The priority section also does not cover claims from a person who either (a) has been released from prison or (b) is currently serving a sentence for a crime where he does not claim he was tortured into confessing by Burge or one of his then-subordinates (even if he is also serving a covered sentence).

^{14/} This construction seems appropriate since the grant of statewide discovery enforcement is in the same section as a reservation to the Circuit Court of Cook County of challenges to the Commission’s authority or access to evidence.

^{15/} The one provision that is arguably inconsistent with this construction is the provision that orders in cases dismissed for insufficient evidence should be filed “with the court clerk in the circuit of original jurisdiction.” This clause does give the Commission the power to file dismissals of claims that are not related to Jon Burge and arise from other counties, and therefore serves a purpose consistent with the construction.

E. Hauad's Arguments Concerning Factual Relationships.

Counsel for Hauad has argued that the Hauad claim is factually “related to allegations of torture committed by Commander Jon Burge” for several reasons. While the Commission agrees that confirmed allegations of abuse at the Chicago Police Department have not been limited to Burge and his subordinates, the Commission cannot agree with Hauad’s arguments as to why that fact changes the Commission’s jurisdiction.

1. The Broad Scope of Allegations of CPD Abuse Doesn’t Broaden the Statute.

First, Hauad argues that because there were “broad-sweeping, systemic views by CPD that torture and duress were acceptable means of police investigation” that “plagued the CPD in the 1980s and 1990s,” Hauad’s claim is related to the abuse perpetrated by Burge and his subordinates. Hauad’s March 5 Position Statement at 1, 3. Hauad further argues that the TIRC Act has a broad remedial purpose, and should be construed broadly. Hauad Position Statement at 3-4.

In asking the Commission to look past the plain meaning of the definition of “claim of torture,” discussed above, Hauad cites to a portion of the legislative history, quoting just a portion of Sen. Raoul’s statements on March 25, 2009, when the Act passed the Senate. Hauad Position Statement at 3-4. Hauad does not cite to the remainder of Sen. Raoul’s remarks that day, including where Sen. Raoul appeared to limit the focus to officers supervised by Burge:

[The Act] creates the Illinois Torture . . . Inquiry and Relief Commission . . . to investigate any claims brought by victims of Chicago Police Commander Jon Burge or any officer under his supervision.

* * * * *

[C]losure will not be achieved until each and every victim of Commander Burge and – and the police officers under his command, each and every one of their cases are heard.

Sen., 3/25/09 Tr. 25-27 (emphasis added).^{16/} Given this and other legislative history, the Commission does not believe the General Assembly clearly stated a remedial purpose for the TIRC Act that is as broad as is contended by Hauad’s counsel. *See* note 6 *supra*.

2. Cases under the Post-Conviction Act Do Not Determine the Scope of the “Related to . . . Burge” Language in the TIRC Act.

Hauad’s Position Statement at 4-5 cites to cases under the Post-Conviction Act, including *People v. Wrice*, 962 N.E.2d 934 (Ill. 2010), finding systemic abuse at Area Two, and *People v.*

^{16/} Hauad also does not cite Sen. Raoul’s January 2009 statement that while there was abuse elsewhere, a Burge-related commission was different because of the special prosecutor’s findings. *See* note 7 *supra*.

Almodovar, 984 N.E.2d 100, 112 (1st Dist. 2013)(finding pattern of abuse by Area Five Detective Reynaldo Guevara), and argues that these cases help define what is “related.” The Commission agrees that those cases help define, *inter alia*, the types of alleged torture that are “related to” prior findings of torture. But those cases do not address the question at issue here: whether an Area Five case from 1997 is “related to” the work of Jon Burge and his subordinates at Area Two, Area Three, or elsewhere.

3. Phil Cline’s Role as Commander of Area Five in 1997 Does Not Make this Case “Related to . . . Burge.”

Hauad’s Position Statement at 5-6 argues that the cases are “related to” the allegations against Burge because former Superintendent Phil Cline was the Commander at Area Five at the time Hauad was interrogated, and Cline had replaced Jon Burge at Area Two when Burge was transferred in 1986. This argument stretches too far.

In addition to Phil Cline replacing Jon Burge at Area Two, Leroy Martin was Burge’s supervisor at Area Two when Burge supervised detectives there. Both Leroy Martin and Phil Cline later became Superintendents of Police, serving from 1987-92 and 2003-07, respectively. Cline had previously served as First Deputy Superintendent. Every police officer in the City was supervised by Martin and Cline for many years. Under the argument made by Hauad, a claim of torture by any CPD officer would therefore be related to Burge. Again, the language of the TIRC Act, and the legislative history, point towards a narrower definition of “claim of torture” than every claim arising from the Chicago Police Department.

The Commission therefore reluctantly concludes that while claims of abuse and torture by the Chicago Police Department may have been widespread, the existing legislative authority of the Commission to address those claims is regrettably limited to claims involving Jon Burge or officers who, at the time of the interrogation, were then or had previously been, supervised by him.

III. THE COMMISSION’S INTENTIONS CONCERNING NON-BURGE CASES.

Because there is uncertainty about the Commission’s jurisdiction, and because the Commission is authorized to accept new claims only until Aug. 10, 2014,^{17/} the Commission will continue to accept claims in which the claimant asserts that he or she was coerced by torture into a confession that was used to obtain a conviction in an Illinois court, whether or not the claim is related to Jon Burge.^{18/} The Commission will not, however, act to investigate or refer any claims that do not involve Burge or officers who then worked or had previously worked under the

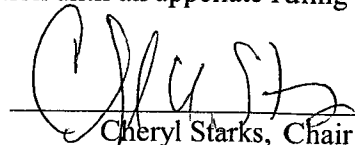
^{17/} The Commission itself will continue to exist after August 2014, and anticipates being funded during the period that it will require to investigate, consider, and decide all claims that are timely filed.

^{18/} The Commission wishes to express its disappointment that it may not be able to provide relief to persons with claims of torture that have substantial merit.

supervision of Burge, unless and until there is either an appellate ruling clarifying that the Commission does have jurisdiction over such claims, or an amendment by the General Assembly to the TIRC Act.^{19/}

Should any claimant wish to seek administrative review of the commission's policy with respect to non-Burge related claims, the Commission will, upon the request of a claimant, issue a formal denial of any non-Burge related claim. Absent such a request, the Commission intends to maintain such claims as filed, but take no further action until an appellate ruling on jurisdiction.

DATED: June 18, 2014


Cheryl Starks, Chair
Illinois Torture Inquiry
and Relief Commission

^{19/} The Commission may, however, dismiss claims that do not, after an initial review, fall within the Commission's jurisdiction for other reasons, such as because they do not allege a claim of torture as required by the TIRC Act.